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LoanCare, LLC

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

In re

Y. ROGER YU,

Debtor.

Case No. 23-50023

Chapter 13

**OBJECTION TO CONFIRMATION OF
CHAPTER 13 PLAN**

341(a) MEETING:

DATE: April 17, 2023

TIME: 9:30 AM

PLACE: Teleconference

LoanCare, LLC (hereinafter "Creditor"), secured creditor of the above-entitled debtor, Y. Roger Yu (hereinafter "Debtor"), hereby objects to the Chapter 13 Plan filed by Debtor in the above-referenced matter. The objection is based on Creditor's Proof of Claim No. 10 and the authorities cited herein and on such additional submissions and argument as may be presented at or before the confirmation hearing.

1) INTRODUCTION

Creditor respectfully requests that the Court deny confirmation of the Debtor's Chapter 13 Plan as it fails to properly provide for Creditor's claim. Specifically, Debtor's Plan fails to provide for a cure of Creditor's pre-petition claim in full. For the reasons set forth herein, the Court should deny confirmation of the Debtor's Chapter 13 Plan.

2) STATEMENT OF FACTS

1. Creditor's claim is evidenced by a promissory note executed by Debtor and dated January 8, 2014, in the original principal sum of \$210,000.00 (the "Note"). A copy of the Note is

1 attached to Creditor's proof of claim no. 10 as filed on the Court's claims register ("CCR") in the
2 instant bankruptcy case and incorporated herein by reference.

3 2. The Note is secured by a deed of trust (the "Deed of Trust"¹) encumbering the real
4 property commonly known as 37591 3rd St, Fremont, California 94536-2845 (the "Subject
5 Property"). A copy of the Deed of Trust is attached to Creditor's proof of claim no. 10 as filed in the
6 instant bankruptcy case and incorporated herein by reference.

7 3. Subsequently, the beneficial interest in the Deed of Trust was transferred to Creditor.
8 A copy of the Assignment of Deed of Trust is attached to Creditor's proof of claim no. 10 as filed in
9 the instant bankruptcy case and incorporated herein by reference.

10 4. On January 11, 2023, Debtor filed the instant Chapter 13 bankruptcy petition in the
11 United States Bankruptcy Court for the Northern District of California, San Jose Division, and was
12 assigned case number 23-50023.

13 5. On March 22, 2023, Creditor filed its proof of claim (the "Proof of Claim") secured
14 by the Subject Property with a total outstanding balance in the amount of \$168,933.67, and a pre-
15 petition arrearage claim of \$1,327.50. A copy of Creditor's Proof of Claim is attached hereto as
16 Exhibit A and is incorporated herein by reference.

17 **3) ARGUMENT**

18 **A. DEBTOR'S CHAPTER 13 PLAN CANNOT BE CONFIRMED AS PROPOSED.**

19 The provisions of 11 United States Code ("U.S.C.") Section 1325 set forth the requirements
20 for the Court to confirm a Chapter 13 Plan. The burden is on the debtor to demonstrate that the plan
21 meets the conditions essential for confirmation. Warren v. Fidelity & Casualty Co. of N.Y. (In re
22 Warren), 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988). For the reasons detailed herein, the Debtor fails to
23 meet this burden.

24 **1. Debtor's Chapter 13 Plan Cannot Be Confirmed Because Debtor's** 25 **Secured/Unsecured Debt Exceeds the Chapter 13 Debt Limits.**

26 Section 109(e) of the Bankruptcy Code sets the "debt limits" for a Chapter 13 debtor and
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¹ The Note and Deed of Trust are collectively referred to herein as the "Subject Loan."

1 provides that noncontingent, liquidated, unsecured debts must be less than \$394,725.00, and
2 noncontingent, liquidated, secured debts must be less than \$1,184,200.00, to qualify for relief under
3 Chapter 13². See 11 U.S.C. § 109(e).

4 The Debtor's Bankruptcy Schedules reflect unsecured debt in the total amount of \$3,110.476,
5 and secured debt in the total amount of \$2,921,913.00. As the limit for unsecured/secured debt in a
6 Chapter 13 case is \$394,725.00/\$1,184,200.00, the Debtor does not qualify for relief under Chapter
7 13 and the Plan cannot be confirmed.

8 **2. Debtor's Chapter 13 Plan Cannot Be Confirmed Because it Does Not Provide**
9 **for the Full Value of Creditor's Claim.**

10 11 U.S.C. Section 1325(a)(5)(B)(ii) requires a debtor's Chapter 13 Plan to distribute at least
11 the allowed amount of a creditor's secured claim. See 11 U.S.C. § 1325(a)(5)(B)(ii). Furthermore,
12 the requirement that a debtor provide for the full value of a creditor's secured claim is mandatory for
13 plan confirmation. See Barnes v. Barnes (In re Barnes), 32 F.3d 405, 407 (9th Cir. 1994); see also In
14 re Lucas, 3 B.R. 252, 253 (Bankr. S.D. Cal. 1980)("In order to confirm any Chapter 13 Plan, the
15 court must be satisfied...that the plan meets all the requirements of § 1325(a)."). The burden lies
16 with the debtor in demonstrating compliance with section 1325(a). Chinichian v. Campolongo (In re
17 Chinichian), 784 F.2d 1440 (9th Cir. 1986).

18 The Debtor's Plan cannot be confirmed as proposed because it fails to properly provide for
19 the cure Creditor's pre-petition arrears or ongoing monthly post-petition payments. As previously
20 discussed, Creditor's claim for pre-petition arrears secured claim is in the total amount of \$1,327.50.
21 See Claim No. 10. However, the Debtor's Chapter 13 Plan fails to provide for payment of the pre-
22 petition arrears on Creditor's secured claim and fails to provide for ongoing monthly post-petition
23 payments. As the Debtor's Plan fails to provide for a cure of Creditor's pre-petition arrears, it fails to
24 satisfy 11 U.S.C. 1325(a)(5)(B)(ii) and cannot be confirmed as proposed.

25 **3. Debtor's Chapter 13 Plan Should Not Be Confirmed Because It Fails to Provide**
26 **for Ongoing Post-Petition Payments.**

27 Section 1322(b)(5) of the Bankruptcy Code provides for the maintenance of post-petition
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² Effective for bankruptcy petitions filed on or after April 1, 2016.

1 payments on a secured or unsecured claim on which the final payment is due after the proposed final
2 payment under the plan. 11 U.S.C. § 1322(b)(5). Here, the loan relating to Creditor's secured claim
3 matures\February 1, 2044, which is after the term of the Debtor's Plan, yet the Plan makes no
4 provision for ongoing post-petition payments. As the Debtor's Plan fails to provide for the
5 maintenance of post-petition payments on Creditor's secured claim, it cannot be confirmed as
6 proposed.

7 **IV. CONCLUSION**

8 In light of the Debtors' Plan's failure to provide for a cure Creditor's pre-petition claim in
9 full, the Debtors exceeding the Chapter 13 debt limit, and the Plan's failure to provide for ongoing
10 post-petition payments as required under the loan documents. Creditor respectfully requests that the
11 Court deny confirmation of the Debtors' Chapter 13 Plan, or alternatively, convert the Debtors' case
12 to one under Chapter 7 of the Bankruptcy Code. WHEREFORE, Creditor respectfully requests:

- 13 i) That confirmation of the Debtor's Chapter 13 Plan be denied;
14 ii) Alternatively, that the Plan be amended to provide for the pre-petition arrears listed
15 in Creditor's Proof of Claim to be paid within a period not to exceed sixty (60) months; and
16 iii) For such other and further relief as this Court deems just and proper.

17
18 Respectfully submitted,

19 Dated: April 17, 2023

ALDRIDGE PITE, LLP

21 By: /s/ Josephine E. Salmon
22 JOSEPHINE E. SALMON (SBN 206167)
23 Attorneys for LoanCare, LLC
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

In re

Y. ROGER YU AKA YINTAO YU,
Debtor(s).

Case No. 23-50023

Chapter 13

R.S. No.

PROOF OF SERVICE

I, Ana Vetter, declare that:

I am employed by Aldridge Pite, LLP. My business address is: 4375 Jutland Drive, Suite 200; P.O. Box 17933, San Diego, CA 92177-0933. I am over the age of eighteen years and not a party to this cause.

On April 17, 2023, I caused the following documents:

• **OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN**

to be served in said cause by placing a copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail, and/or via electronic means pursuant to Bankruptcy Local Rule 9013-3(c) as follows:

/s/Ana Vetter

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DEBTOR'S ATTORNEY

TRUSTEE

U.S. TRUSTEE

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 17, 2023 /s/ Ana Vetter